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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
OF THE STATE OF CALIFORNIA

In the Matter of:	)	ESCROW LICENSE NO.: 963-1915
	)	
THE COMMISSIONER OF BUSINESS	)	
OVERSIGHT,	)	
	)	
Complainant,	)	ACCUSATION IN SUPPORT OF ORDER
	)	SUSPENDING TOWER ESCROW, INC.'S
v.	)	ESCROW AGENT'S LICENSE
	)	
TOWER ESCROW, INC.,	)	
	)	
Respondent.	)	
	)	
	)	

The Commissioner of Business Oversight (Commissioner) is informed and believes and based upon such information and belief, alleges and charges as follows:

**I.**

**Introduction**

1. Tower Escrow, Inc. (Tower) is an escrow agent licensed by the Commissioner pursuant to the Escrow Law (Fin. Code § 17000 et seq.). Tower has its principal place of business located at 3600 Wilshire Boulevard, Suite #426, Los Angeles, CA 90010.

2. On or about June 7, 2017, the Commissioner learned about two separate incidents of Tower making unauthorized disbursements of trust funds in violation of Financial Code section

ACCUSATION IN SUPPORT OF ORDER SUSPENDING TOWER ESCROW, INC.'S ESCROW  
AGENT'S LICENSE

1 17414 and California Code of Regulations, title 10, sections 1738 and 1738.2. In both instances in  
2 2017, Tower recklessly followed the instructions of an imposter who had assumed the identity of the  
3 actual principals of the escrow transaction and emailed Tower requesting that the trust funds be  
4 disbursed to accounts that did not belong to the actual principals. Tower failed to exercise due  
5 diligence and contact the actual principals in both instances to confirm the new disbursement  
6 instructions, despite indications that the instructions may not have come from the actual principals.  
7 Based upon Tower's violations of the Escrow Law, the Commissioner, on February 8, 2018, issued  
8 an Order to Discontinue Violations Pursuant to California Financial Code Section 17602 (2018  
9 Order) against Tower and directed Tower to immediately discontinue violations of Financial Code  
10 section 17414 and California Code of Regulations, title 10, sections 1738, 1738.1 and 1738.2.

11 3. As detailed below, Tower has again failed to exercise due diligence and disbursed  
12 trust funds to an imposter who assumed the identity of the actual principals of the escrow transaction  
13 and emailed instructions to Tower to disburse funds to bank accounts that did not belong to the  
14 actual principals.

## 15 II.

### 16 Statement of Facts

17 4. On May 23, 2018, Tower opened Escrow #L-036456-NY for a purchase transaction.  
18 The joint escrow instructions in Escrow #L-036456-NY stated that, "[E]lectronic signatures cannot  
19 be accepted for any instructions concerning the release or disbursement of funds from escrow, for  
20 any items requiring acknowledgement by a Notary Public, or any other document (s) at Escrow  
21 Holder's discretion." Subsequently that same day, a third-party deposit in the amount of \$16,950.00  
22 was made for the buyer in Escrow #L-036456-NY. The third-party deposit instructions stated that,  
23 "In the event the escrow is not consummated, it is understood that all funds deposited in this  
24 escrow... shall be disbursed ONLY in accordance with mutually signed disbursement / cancellation  
25 instructions of the principals ..."

26 5. On or about May 30, 2018, both the buyer and seller in Escrow #L-036456-NY  
27 executed joint instructions to cancel the escrow and disburse buyer's deposit back to the buyer. On  
28 May 31, 2018, the buyer's real estate agent forwarded an email from the buyer to Tower with the

1 buyer's mailing address for the refund check. Subsequently that day, Tower issued a trust check in  
2 the amount of \$16,950.00 to the buyer and mailed the trust check to buyer's mailing address.

3 6. On or about June 5, 2018, an imposter, assuming the identity of the buyer's real estate  
4 agent and using a different email address than the buyer's real estate agent's actual email address,  
5 emailed Tower requesting that the refund of the buyer's deposit be sent through wire transfer. The  
6 fake email address used by the imposter contained an email signature with the actual email address.  
7 Tower did not raise any issue with the fact that the imposter's email address was inconsistent with  
8 the actual email address in the email signature. In response to the imposter's email, Tower notified  
9 the imposter that the buyer would need to return the \$16,950.00 trust check that was already mailed  
10 to the buyer. The imposter informed Tower that the buyer would mail the check back to Tower and  
11 subsequently continued to inquire about whether or not Tower received the buyer's refund check and  
12 whether or not Tower would wire the buyer's refund to the bank account provided by the non-  
13 principal.

14 7. On or about June 7, 2018, the imposter requested that Tower cancel the trust check  
15 previously issued on May 31, 2018 and instead have the buyer's refund wired to a bank account  
16 provided by the imposter. Subsequently, that same day, Tower disbursed \$16,950.00 of the buyer's  
17 trust funds to the bank account provided by the imposter, despite: 1) not receiving instructions from  
18 the actual buyer to disburse the buyer's trust funds to the account provided by the non-principal; 2)  
19 not making any attempt to contact the actual buyer or the buyer's real estate agent by telephone to  
20 confirm that the buyer had changed their instruction about how they wanted the buyer's refund to be  
21 disbursed; and 3) not following the escrow instructions which contained a prohibition against the  
22 acceptance of electronic signatures for instructions concerning the disbursement of funds, in  
23 violation of Financial Code section 17414, California Code of Regulations, title 10, section 1738 and  
24 1738.2, and the 2018 Order.

25 8. Subsequently that day, the imposter emailed Tower and stated that they provided  
26 Tower with the incorrect bank account information and requested that Tower recall the wire and  
27 disburse the buyer's refund to another bank account provided by the imposter. Despite the second  
28 change in disbursement instructions, Tower again failed to contact the actual buyer or the buyer's

1 real estate agent by telephone to confirm the change in disbursement instructions and Tower, instead,  
2 informed the imposter that they would attempt to recall the wire.

3 9. Subsequently, on June 7, 2018, the buyer's actual real estate agent contacted Tower  
4 about the status of the refund and Tower subsequently learned that neither the buyer or the buyer's  
5 actual real estate agent requested that Tower cancel the trust check issued on May 31, 2018 and  
6 disburse the buyer's refund through wire. Furthermore, the buyer also informed Tower that the bank  
7 account provided by the imposter did not belong to the buyer.

8 10. As a result of Tower's unauthorized disbursement of the buyer's trust funds to the  
9 non-principal, a debit balance of \$16,950.00 was created in Escrow #L-036456-NY, in violation of  
10 California Code of Regulations, title 10, section 1738.1 and the 2018 Order, from June 7, 2018 until  
11 June 12, 2018, when Tower fully replaced the debit balance.

12 11. Tower violated the 2018 Order by continuing to make unauthorized disbursement of  
13 trust funds and create debit balances in violation of Financial Code section 17414 and California  
14 Code of Regulations, title 10, sections 1738, 1738.1 and 1738.2, despite being ordered by the  
15 Commissioner in the 2018 Order to immediately discontinue those violations.

### 16 III.

#### 17 Applicable Law

18 12. Financial Code section 17414 provides, in pertinent part:

19 (a) It is a violation for any person subject to this division or any  
20 director, stockholder, trustee, officer, agent, or employee of any  
21 such person to do any of the following:

22 (1) Knowingly or recklessly disburse or cause the disbursal of  
23 escrow funds otherwise than in accordance with escrow  
24 instructions, or knowingly or recklessly to direct, participate in, or  
25 aid or abet in a material way, any activity which constitutes theft or  
26 fraud in connection with any escrow transaction.

27 ...

28 13. Financial Code section 17602 provides:

If it appears to the commissioner that any licensed escrow agent has  
violated its articles of incorporation, or any law or rule binding upon  
it, the commissioner shall, by written order addressed to the agent

direct the discontinuance of such violation. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 17604.

14. Financial Code section 17604 provides, in pertinent part:

...  
If no hearing is requested within 30 days after the mailing of such notice and none is ordered by the commissioner, the order may become final without hearing and the licensed escrow agent shall immediately discontinue the practices named in the order.  
...

15. Financial Code section 17608 provides, in pertinent part:

The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that:

...  
(b) The licensee has violated any provision of this division or any rule made by the commissioner under and within the authority of this division.  
...

16. California Code of Regulations, title 10, section 1738, provides in pertinent part:

(a) All money deposited in such “trust” or “escrow” account shall be withdrawn, paid out, or transferred to other accounts only in accordance with the written escrow instructions of the principals to the escrow transaction or the escrow instructions transmitted electronically over the Internet executed by the principals to the escrow transaction or pursuant to order of a court of competent jurisdiction.  
....

17. California Code of Regulations, title 10, section 1738.1 provides:

An escrow agent shall not withdraw, pay out, or transfer monies from any particular escrow account in excess of the amount to the credit of such account at the time of such withdrawal, payment, or transfer.

18. California Code of Regulations, title 10, section 1738.2 provides:

An escrow agent shall use documents or other property deposited in escrow only in accordance with the written escrow instructions of the principals to the escrow transaction or the escrow instructions transmitted electronically over the Internet executed by

the principals to the escrow transaction, or if not otherwise directed by written or electronically executed instructions, in accordance with sound escrow practice, or pursuant to order of a court of competent jurisdiction.

#### IV.

#### Prayer

19. Based on the foregoing, the Commissioner finds that Tower has violated Financial Code sections 17414 and 17604 and California Code of Regulations, title 10, sections 1738, 1738.1 and 1738.2.

20. The Commissioner further finds that Tower violated the Commissioner's 2018 Order by continuing to make unauthorized disbursement of trust funds and creating debit balances. Tower's violations of the Commissioner's 2018 Order were due to their failure to implement sufficient controls to ensure due diligence is exercised when reviewing disbursement instructions, as evidenced by the fact that the imposter in Escrow #L-036456-NY obtained trust funds from Tower with instructions sent through a fake email address and assuming the identity of the actual principal to the transaction, the same method used by the imposters in the other two incidents which led to the issuance of the Commissioner's 2018 Order.

21. Based upon Tower's repeated violations of the Escrow Law, including making unauthorized disbursement of trust funds, creating debit balances, violation of the Commissioner's 2018 Order and Tower's demonstrated inability to implement sufficient controls to ensure compliance with the Commissioner's 2018 Order and the Escrow Law, it is in the best interests of the public to suspend Tower Escrow, Inc.'s escrow agent's license pursuant to Financial Code section 17608.

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1 WHEREFORE, IT IS PRAYED THAT Tower Escrow, Inc.’s escrow agent’s license be  
2 suspended for a period of up to 12 months.

3 Dated: November 26, 2018  
4 Los Angeles, CA

JAN LYNN OWEN  
Commissioner of Business Oversight

6  
7 By \_\_\_\_\_  
8 Johnny Vuong  
9 Senior Counsel  
10 Enforcement Division  
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